(1)

No.

Supreme Court, U.S.
FILED

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IN THE

Supreme Court of the United States

RICHARD WHITE AND JANET WHITE ----Petitioners

v.

SECURITY PACIFIC FINANCIAL INC.----Respondent
(ONLY PARTY)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE CALIFORNIA STATE SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

RICHARD WHITE AND JANET WHITE
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143pp

QUESTIONS PRESENTED

A In part, the purposes of challenge and recusal, are to prevent injustice and judicial corruption.
Did the mis-application of California civil code of procedure170.6, prevent the defendants from having a fair trial?

B. Overt acts of Judges are grounds for a new trial.
Were the Defendants denied a fair trial because of irregularities on behalf of Judges and Plaintiffs counsel?

C State and Federal Law does not eliminate "intrinsic" or "extrinsic" fraud, as a cause to deny a motion for Summary Judgment.
Did the misapplication of CCP1856(a) deny the Defendants a fair trial?

D Should CCP170.6 be interpreted to include appellate and supreme court justices?

E. The inherent power of the U. S. Supreme court is to prevent injustice and corruption in lower Courts.
Should the U.S. Supreme Court refer this case to the U.S. Justice Department for further investigation?

TABLE OF CONTENTS

Question A..... i
Question B..... i
Question C..... i
Question D..... i
Question E..... i
Table of Contents.....ii
Index of Appendices.....iii
Table of Authorities..... iv
I Opinions Below..... 1
II Statement of Jurisdiction..... 1
III Constitutional and Statutory Provisions Involved..... 1
IV Statement of the Case..... 1
1. Pre-trial Bias..... 3
2. Bias in DO20483..... 5
3. Bias in DO29409..... 6
V Summary of Argument..... 12
VI Question A: 15
1 CCPP1856 is in conflict with State and Federal Law..... 15
2 The Courts legal and factual error..... 18
3 Judgment should be reversed..... 20
VII Question B:..... 20
1. Judicial Misconduct..... 20
2. Challenge and Recusal prevents injustice.... 20
3. Overt acts of Judges and legal error are grounds for new trial..... 21
4 Courts Denial of Rehearing was Abuse of Discretion..... 21
VIII Question C: 22
1. No one is above the law..... 22
2. CCP1856(a) should be interpreted to include Intrinsic" and "Extrinsic" fraud..... 22
3 CCP1856(a) is invalid..... 22
IX Question D 22
X Question E 22
XI Damages: 23

1. California State Law entitles Defendants to damages..... 23
XII Conclusion..... 23
Reasons for Granting the Petition..... ////

INDEX OF APPENDICES

California Supreme Court
Denial of Review.....A

Appellate Court (DO29409)
Denial of Rehearing.....B
Opinion.....C
Trial Court
Judgment.....D
Ruling.....E
Plaintiff and Defendant Pleadings.....F
White Declaration.....F1
Plaintiffs' Complaint.....F15
Defendants' Answer.....F18
Plaintiffs' Motion for Summary Judgment.....F20
Plaintiffs' Points and Authorities.....F22
Declaration of TORLONE.....F28
Defendants Separate Disputed Facts F31
Plaintiffs Separate Undisputed Facts.....F36
Defendants Points and Authorities.....F41
Plaintiffs Evidentiary Objections.....F43
Plaintiffs Reply to Defendants Opposition.....F45
Defendants Amended Points & Authorities.....F49
Declaration of Huffman.....F58
White Letter To Huffman, Nares, Haller.....G74
Constitutional and Statutory Provisions Involved Appendix ..H

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

(I) OPINIONS BELOW

1. The date on which the California Supreme Court denied Review of DO29409; was on 7/21/99; and appears at Appendix A.
2. The Appellate Denial for Rehearing on 5/10/99; appears at Appendix B.
3 The Opinion of the 4th District Court of Appeals on 4/19/99; appears at Appendix C.
4 The Judgment of the California Superior Court on 9/26/97; appears at Appendix D.
5 The Tentative Ruling of California Superior Court on 5/16/97; appears at Appendix E.
6 The Opinion of the 4th District Court of Appeals on Case DO2048; was on 1/29/97; and appears at Appendix F.

(II) JURISDICTION

1. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a); and Supreme Court Rule 10(a) & (b).

(III) CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED (APPENDIX H)

	Page No.
CC1567	A1
CC1571	A1
CC1572	A1
CC1574	A1
CC1622	A1
CC1623	1
CC1640	1

CC1649..... 1
CC1709..... 1
CCP1856(a)&(g)..... 1
CC1916..... 2
CCP170.6..... 2
CCP437c..... 2
CCP473..... 2
CCP482.040..... 2
CCP580a..... 2
CCP592..... 4
CCP663(1)..... 4
CCP907..... 4
CCP908..... 5
Calif. Court of Appeals Rule 23..... 5
Calif. Court of Appeals Rule 29..... 6
CCP170.6..... 6
PC6068a,b,c,d,g,o & (7)..... 7
Federal Pleading Rule 48.5..... 7
Pleading 48.5..... 8
Rule 83.5..... 8
FRCP59(a)..... 8
FRCP60(b)..... 8
FRE804a(4)..... 21
Federal Local Rule 83.5f(5)..... 8
Rodriguez v. Muncipal Ct. Of Visilia..... 9
Lentfoehr v. Lentfoehr..... 9
George v. Beaty..... 9
Irer v. Gawn..... 9
Baker v. Baker..... 9
Duke Power Co. V. Carolina Environmental Co..... 9
Guzman v. Ruiz..... 10
Bose Corp. V. Consumers Union..... 10
Berri v. Rogers..... 10
Fre v. Bland..... 11
Fiske v. Bauder..... 11
State Farm v. White (DO20483)..... 12
Imbler v. Pachtman..... 20
Supreme Court Rule 10(a) & (b)..... 20
FREP804..... 21
in writ of certiorari page no.

FPI Development, Inc. v Nakashima 9
Bose Corp. v. Consumer Union of the U.S., Inc. 17
Dayton Board of Education v. Brinkman 17
Fre v. Bland 17
Coffelt v. Coffelt..... 19
U.S. v. Throckmorton..... 19
Schrader Iron Works, Iron Works v. Lee..... 19
Gay v. Torrance..... 19

I. STATEMENT OF THE CASE

1. Pre Trial Bias.

Over a period of several years prior to this action, Defendant, Richard White had been extremely critical of Appellate Justice Richard HUFFMAN; when he was the Chief Prosecutor for the D/A in San Diego county, California. That criticism also involved and Presiding Justice Daniel KREMER, previously a Prosecutor for the California State Attorney General. (App F1).

The thrust of the criticism set forth in the Declaration of WHITE; alleges that the District Attorney of San Diego County and State Attorney General were giving "protection" to campaign contributors; prominent organized crime figures; prostitutes; drug dealers; Animal Regulations Officers'; Sheriffs vice officers; and police in various types of criminal activity.

In retaliation, KREMER & HUFFMAN led 2 prosecution teams to have Defendant, Richard White falsely arrested for the "illegal possession of wolves"; and then unsuccessfully attempted to have him found "insane". At the time, Defendant had a U.S. Federal Zoo permit; a permit from the California Department of Fish and Game; and had also boarded wolves, for the California Department of Fish and Game.

There were at least 7 government prosecutors involved in the Defendants prosecution. KREMER led the Attorney General team; which consisted of Jeffrey JOSEPH and Gary SCHONS.

SCHONS has since been promoted to the lead attorney on the California Commission for Judicial Performance. HUFFMAN was in charge of Deputy District Attorney HOWATT (currently a Presiding Superior Court Judge); Deputy

District Attorney's MAINO & REVAK; also participated; and are Superior Court Judges at this time.

The Defendants allegations had triggered 3 libel and slander lawsuits against him by 2 Deputy Sheriffs; a Sheriffs vice cop; about half a dozen Animal Regulation Officers, and the County Veterinarian.

The purpose of the bogus "wolf charges", and the "insanity" attempt; was to prevent the Defendant from testifying on his own behalf in the 3 lawsuits. During that time, HUFFMAN filed a motion to "protect" the Plaintiffs in these 3 lawsuits. (App. F58).

One of those lawsuits against the Defendant involved allegations that Superior Court Judges, Raul ROSADO and Earl GILLIAM; had improper relationships with prostitute/drug dealer Betty Jean Tucker DRAYNER.

The Defendant had accumulated several thousand pages of document any evidence to support his claims of corruption by the Sheriff, District Attorney, HUFFMAN and the Attorney Generals' Office.. (WHITE's Declaration paragraphs 12, 13, and 14)

Several days before trial was to commence in DO20483 on 11/8/93; Defendant learned that State Farms attorney's had gotten together and coached all of their witnesses to commit perjury, regarding the extent of damages to Ms. CAREY'S home.

Defendants subsequent motion to file a cross/complaint and delay trial was denied.

Defendant had not been notified ROSADO was to be trial Judge until aboout 4 days prior to 11/8/93; which made it impossible for Defendant to file a written objection to him, pursuant to CCP170.3. In response, the Appellate Court claimed that they could not act on a claim of bias because: **"White did not file any written objection (14 days prior) to Judge Rosado's participation in the case, as required by CCP170.3."**

The pleadings in DO20483 had elaborated in great detail about the corruption between ROSADO, GILLIAM, HOWATT, KREMER & HUFFMAN; and were reviewed by Appellate Justices NARES, MC DONALD & BENKE. (Also see WHITE letter to HUFFMAN, NARES & HALLER.)

Paragraph 88 of WHITE'S Declaration is incorrect. It should read: "HUFFMAN did not testify against the Defendants".

Under California Law, the rest of the other allegations in Defendants Declaration are now legally true.

(See: RODRIGUEZ v. Municipal Court of Visalia; Lentfoer v. Lentfoer; and George v. Beaty.).

As prosecutors, HUFFMAN & KREMER, et. al.; were subject to criminal prosecution. (See IMBLER v. Pachtman).

2. BIAS IN <u>DO-20483</u>

On 1/29/97, in DO20483; the Appellate Court affirmed the Judgment of ROSADO in State Farm v. White.

In San Diego County, presiding Judges of Superior Court are responsible for case assignments. HOWATT was Presiding Judge in Superior Court. When ROSADO was brought out of retirement to hear State Farm v. White. Defendant challenged ROSADO, but he refused.

In DO20483, ROSADO had refused to allow questioning of about 50 falsified insurance claims; refused to allow a tape recording into evidence which proved the falsity of the Plaintiffs' claim; and limited the Defendant to approximately 18 minutes total time for his closing argument.

In DO20483, Sec. II, para. E, the Appellate Court contended that Judicial Bias was of little consequence in the outcome of Defendants trial, as follows:

A. Bias of Judiciary

White asserts that his case was intentionally sent to Judges Gamer and Rosado as a result of a conspiracy to retaliate against him for his efforts to uncover scandals involving the notorious collapse of the United States National Bank; the tax-evasion conviction of a prominent San Diego business-man and an unsuccessful attempt to have him committed to a psychiatric hospital. White also alludes to the recent corruption conviction of three former members of the superior court and Judge Gamer's marriage to one of the convicted judges.

White contends Judge Rosado had a relationship with the owner of a massage parlor and as a

consequence made a ruling favorable to a vice squad officer who was familiar with the relationship.

The 4th District Appellate Court denied Plaintiffs Appeal.

3. BIAS IN DO29409.

In 1990, Defendants gave the Plaintiff notes and Trust Deeds on 2 properties which were adjacent to each other. The present action arose after th Defendant defaulted on both properties; and both properties were sold at public auction.

On 3/19/90 the Defendants' had given a Note and Trust Deed for $72,000 to the Plaintiff, on the subject property of this lawsuit.

Plaintiffs loan was secured only by the property, and its rents and profits. **There was no provision for recourse against the Defendants.** The Plaintiffs "default" provision states:

> **After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale. Trustee shall apply the proceeds of sale to payment of: all sums expended under the items hereof, not then repaid with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto. Trustor shall pay all Beneficiary's attorney fees to perfect and realize on its security interest.**

On 10/28/93, the Defendants signed a "Modification Agreement"; which stated:

> **"SECURITY: I give you a security interest in the collateral checked 'yes' below (including proceeds of the collateral)";**
> **(Yes) Real Estate secured by a deed of trust located at the address shown: 8722 Wintergarden Blvd., Lakeside, Ca. 92040; and dated 3/19/90.**
> **(Yes) Other: ONE SONY TELEVISION SET".**
> **(The SONY T.V. was a cheap portable worth less than $100.)**
> On 12/30/94, the Plaintiff was given a 2nd Modification

Agreement; which was witnessed and counter signed by Plaintiffs Loan Closer, Dennis CARRILL. The loan securities remained unchanged. **There was no recourse provision, and the "Modification" stated as follows:**

> **SPECIAL MODIFICATION: The 'COMBINED NOTE & SECURITY AGREEMENT", dated Oct. 28, 1993, given by CUSTOMER to CREDITOR in connection with CUSTOMER'S Account, is modified in the following respects only: The maturity date is extended from Oct. 28, 1993 to Jan. 20, 2010, at which time all remaining principal and interest shall be due. The monthly payment amount shall be increased from $898.40 to $1043.40 beginning on Jan. 30, 1995 and remaining in effect until the maturity date. CUSTOMER acknowledges and agrees: (1) the unpaid balance outstanding on Customer's Account as of the date this Modification agreement is signed is $78,333.79; and (2) all Customers obligations under the NOTE, as modified by this Modification Agreement, continue to be fully secured by that Deed of Trust dated March 19, 1990, recorded March 21, 1990 as FILE NO.90-149513 in the Official Records of San Diego County, State of California, given by CUSTOMER to secure all Customer's obligations with regard to CUSTOMER'S ACCOUNT.**

On all 3 occasions that all of the above notes were signed; the Plaintiffs agents all made the fraudulent promise to the Defendants; that there would be absolutely no further recourse, if the notes were defaulted upon.

On 9/28/95, Defendants defaulted on their Note. The Plaintiff has never attempted to foreclose on the cheap portable T.V.; never attempted to collect about $900 per month for which the property was rented; or force a foreclosure sale, which occurred over a period of about 6 ½ months after default.

On 4/8/96, a senior lien holder held a foreclosure sale, and the property sold for $85,000. The Plaintiff did not attend the auction to protect its equity. The 1 ½ acre commercially

zoned property; with a 3 bedroom residence, basement and 2 ½ car garage, was valued at about $350,000, at the time of sale; and it was subsequently put up for sale by the new owners for $340,000.

On 11/13/96, the Plaintiff filed a Complaint for Deficiency Judgment , alleging that $78,204 was due, plus 15.55% interest plus $2454 in "reasonable" attorney fees; Plaintiff had claimed its note had supposedly become "valueless". Plaintiffs Complaint did not state the date of foreclosure sale, the value of the property at the time of sale, or its sale price; all of which is mandatory, pursuant to CCP580a; unless the Plaintiffs note had become "value-less"; (See Plaintiffs Complaint, App. F15).

The Defendants filed an answer to Plaintiffs Complaint in pro se. Defendants denied that $78,204 was due; or that $2454 was a "reasonable" attorney fee. The Defendants affirmative Defenses claimed: failure to state a Cause of Action; fraud; and that Plaintiff failed to defend its equity at auction. (See Defendants Answer; App. F18)

On about 5/25/97, Plaintiff filed a motion for Summary Judgment; with a supporting Declaration of facts made by one of Plaintiffs collection agents, Dave TORLONE. (Declaration of TORLONE, App. F28)

TORLONE swore under penalty of perjury that he could competently testify that the facts that "<u>are personally known by him to be true</u>".as follows: <u>Defendants made a Note to the Plaintiff on 10/28/93; "</u>.....<u>the security for the Note had become exhausted and worthless, without any act on the part of the Plaintiff".</u> It is an undenied fact that TORLONE was not with Plaintiffs loan closers on 3/19/90 or 10/28/93.

TORLONES'S Declaration did not state he was present at foreclosure auction to protect Plaintiff's equity; (he is merely a collection agent). His Declaration does not claim he attempted to collect rents or profits to reduce Plaintiffs financial exposure; or foreclose on the Plaintiffs only other security: the cheap, portable SONY T.V. or whether fraudulent promises were made to the Defendants or not.

On 4/25/97, Plaintiff filed its Separate Statement of Undisputed Facts; **which does not mention that Plaintiffs failed to defend their equity, or that the balance due under**

the contract, or the $2454 in attorney fees, and "fraud", were still in dispute.

TORLONE's Declaration does not state that Plaintiff attempted to foreclose ahead of the senior lien holder, 6 ½ months earlier, in order to prevent their Note from becoming supposedly **"value-less"**. It does not state the value of property at auction sale; or that Plaintiff's failure to defend equity, value of contract and fraud; were all issues in dispute.

Defendants' had previously hired their legal counsel to review Plaintiffs Complaint and Summary Judgment Motion. In turn, counsel prepared (2) Separate Statements of Disputed Facts in Opposition to Plaintiffs Motion for Summary Judgment; a Declaration in Opposition to Plaintiffs Motion for Summary Judgment; a Memo. of Points and Authorities; plus an Amended Memo of Points and Authorities which were filed on 5/2/97 and 5/8/97. (App F31, F36, F41, F43, F45,and F49).

The Defendants disputed facts claimed that Plaintiffs "falsity" and "misrepresentation", caused Defendants to be "defrauded into signing Plaintiffs Note"; and that, "Summary Judgment should be denied unless there are not triable issues of fact", (per CCP437(c), which provides Summary Judgment cannot be obtained if there are triable issues of fact).

Defendants Amended Memo of Points and Authorities claimed there was fraud entitling Defendants to trial per CCP437(c); plus citations from: CC1565, CC1572, CC1585, CC1608, CC1623, CC1640, CC1643, and CC3412.

On 5/8/97, Plaintiff filed its Reply to Defendants Opposition to Motion for Summary Judgment; plus, their Evidentiary Objection to the Declaration of Richard White and Janet White. (App.F45).

Plaintiffs Reply only refers to the Parol Evidence Rule (CCP1856(a)); the word **'fraud"** does not appear anywhere within their Reply Brief.

Plaintiff had no defense to any of the legal citations set forth in Defendants Amended Points and Authorities.

The last paragraph of Plaintiffs "Evidentiary Objections" states: **"Objection. Evidence Code Section 350. Irrelevant; The parole evidence rule bars extrinsic evidence of prior contemporaneous agreements to add to or modify the terms of an integrated written instrument unless there is**

fraud which has not been alleged. See FPI Development. Inc., v. Nakashima(1991) 231 Cal.Ap/3d 367,282 Cal.Rptr. 508."

On about 5/14/97, without their counsels approval; Defendants filed an ex-parte motion to file a Cross Complaint against Plaintiff, their attorneys and CARRILL; which alleged negligence and fraud. Defendants counsel subsequently took the exparte motion off calendar without Defendants consent.

Counsels' reason: He didn't want to have the reputation of suing a fellow attorney.

On 5/16/97, Defendants Counsel orally argued fraud and misrepresentation were triable issues of fact; and that, there was no place in Plaintiffs' Default Provision that allowed for any recourse against the Defendants. He did not argue the specific merits of Defendants proposed Cross-Complaint; Plaintiffs failure to defend equity; Plaintiffs only security was "rents, profits" and the cheap" SONY T.V; or that Plaintiffs Motion was prohibited pursuant to CCP592.

CCP482.040 is mandatory. It requires that TORLONE must not only be able to testify competently to the facts which he personally witnessed; but also, his Declaration must state his belief in the reliability of his informants.

TORLONE's Declaration does not name his informants; **and it makes no reference whatever to the disputed $2454 in attorney fees; Plaintiffs failure to defend their equity; the disputed contract balance; or allegations of fraud.**

Judge JOSEPH granted the Plaintiffs Motion on grounds that "fraud" did not apply to Plaintiffs' contract; and that **"Defendants have failed to show the existence of any triable issue of fact." (App. E)**

At the time that JOSEPH was first assigned to this case; Defendants' were not aware that he was a former State Prosecutor under the supervision of KREMER; when KREMER was attempting to have Defendant found "insane". Therefore Defendants' had no absolute basis for challenge. Since this case was first heard; JOSEPH retired and was appointed as a pro tem Justice to the Appellate Court by KREMER.

The Defendants Opening Brief to the 4th District Court of Appeals argued fraud by CARRILL; misrepresentation by TORLONE; Plaintiffs note was specifically not a recourse note;

rents, profits and T.V. were Plaintiffs only security; legal mistake of counsel was excused; CC1649, (contract to be interpreted in favor of the promisee); CCP1856g, (fraud exception to Parol Evidence); CCP1916 (Impeaching Judgment). CCP663(1) [Vacating Judgment] Smith v. Wade; Cofelt vs. Cofelt and U.S. v Throckmorton.

The Plaintiffs Opposition Brief did not deny fraud by CARRILL; misrepresentation by TORLONE; note was not specifically recourse; Plaintiffs' only security was rents, profits and T.V.; there was not legal mistake of counsel; nor, was there any specific argument against the validity of Defendants numerous legal citations, except the Parol Evidence Rule.

Plaintiffs' failure to deny made Defendants allegations legally true.

Defendants Reply argued that they cannot be penalized for mistake and error of their legal counsel; Plaintiffs Opposition did not deny the material allegations of fact set forth in Defendants Opening Brief; therefore becoming legally true, citing George v. Beatty as their legal authority.

Just prior to Oral Argument, at the Court of Appeal; Defendants were notified that Acting Presiding Justice HUFFMAN and Associate Justices NARES & HALLER would decide this case. Defendants subsequently notified HUFFMAN in writing that he would be challenged.

On 4/12/99, the Plaintiff did not appear to deny any of Defendants allegations; and HUFFMAN stated he would consider the challenge. CCP170.6 exempts Appellate and Supreme Court Justices from challenge; but California BPC 6068 does not.

Defendant challenged HUFFMAN on the basis that, he was on a vendetta against the Defendants'over a period of years, as a prosecutor, he intervened in 3 civil libel and slander lawsuits against the Defendant, Richard White, and then unsuccessfully attempted to have the Defendant found insane and committed to an asylum. HUFFMAN denied the challenge.

Defendant argued the value of property at default was approximately $350,000; the rental income; and the T.V.; were Plaintiffs only security; Plaintiffs extrinsic fraud; prohibited Summary Judgment; attorney error is excusable; and that, the disputed value of Trust Deed; were all triable issues of fact.

Defendants Appeal was denied, and the courts opinion was authored by HUFFMAN; who claimed that Defendants were subject to the Parol Evidence Rule. His Opinion stated that Plaintiff was entitled to Summary Judgment, as a matter of law; because a fraudulent promise, "directly contradicts the express terms of the integrated agreement" HUFFMAN then quoted Barber v. Marina Sailing: which directly contradicted his own Opinion; which stated that, "All doubts should be resolved in favor of the Defendants."

HUFFMANS' Opinion did not mention the disputed Note value or attorney fees, rents or profits, or the T.V.; Plaintiffs failure to defend equity; or the disputed value of property at the auction sale.

Defendant filed a petition for Rehearing, pursuant to Rule 132(b); which provides in part: **"any party may correct the record; and shall make it conform to the truth"**. And also cited Irer v. Gawn. Defendants also made an Application to Produce Evidence of bias by HUFFMAN, NARES, and HALLER. (Declaration of Richard White, and letter to HUFFMAN, et al App. F1 & G74).

Defendants Petition for Rehearing cited CCP580a; CCP592; CC1572; CCPP437c; plus the undenied allegations of fraud; note value; rents, profits and T.V. as only security; and Barber v. Marina Sailing, as absolute defenses. HUFFMAN personally denied Defendants Application for evidence and Rehearing. (App. B).

Defendants Petition for Hearing before the California Supreme Court cited the undenied allegations of rents, profits and T.V. were Plaintiffs only security; Defendants value of property at auction was true; attorney error was true; Judicial bias was true; and it was also true that the $2454 in attorney fees was still in dispute. Defendants also cited CCP437c, CCP580a, CCP592, and CCP1856g as absolute defenses against Summary Judgment; all of which, were summarily denied by Supreme Court Justice GEORGE, without comment. (App.A).

(V) SUMMARY OF ARGUMENT

Existing public Court records prove that the courts have had a long-standing bias, or hatred toward the Defendants.

In DO20483, it was manditory for the trial judge to recuse himself after challenge, but did not. His absurd rulings

and hatred toward the Defendant undoubtedly had an adverse affect on the outcome of Defendants trial.

Presiding Judge of Superior Court, HOWATT intentionally appointed ROSADO to hear STATE FARM v. WHITE. On appeal, the Presiding Justice KREMER and HUFFMAN, were both reminded in writing of their bias and hatred of the Defendants. They assigned the case to 3 more of their cronies (including NARES); who promptly wrote an Opinion that sounded more like ambulance-chasing lawyers defending a crooked used car dealer. HUFFMAN, NARES & HALLER would later hear DO29409.

In DO20409, the Plaintiffs' loan closers made 3 fraudulent promises that Plaintiff would have no recourse against the Defendants in the event of default on the loan.

The contract that Plaintiff sued upon, did not allow any personal recourse against the Defendants except a cheap, portable SONY T.V. Nevertheless, the Plaintiffs attorneys' sued upon their bogus claim of full recourse.

In total, at least 4 separate attorneys with the law firm of Paris and Paris; participated in pleadings related to their motion for Summary Judgment. It is presumed that each of Plaintiffs attorneys are highly skilled in the field of Complaints and Summary Judgments. When Plaintiffs Motion was filed, each of their attorneys reviewed the sparsely worded Complaint and Answers, before proceeding on their respective parts in Motion Pleadings; in order to determine the truth or falsity of Plaintiffs claims.

Accordingly, Plaintiffs Attorneys knew for a fact that the Defendants' Complaint pleadings were based upon a fraudulent contract theory; and also that the Complaint could not meet the minimal requirements for stating a cause of action per CCP480(a) & (b).

Likewise, Plaintiffs attorneys also knew for a fact that their Motion for Summary Judgment, also did not meet the minimal requirements to state a cause of action per CCP592(a) & (b), or Rules 312 and 313. Additionally, Plaintiffs "evidence" (TORLONE Declaration); was nothing more than hearsay that did not attempt to explain the fraud by Plaintiffs 3 loan closers; did not set forth the value of property at auction sale; the obvious surplus; nor did the motion even bother to mention the

disputed $2454 in "reasonable attorney fees"; rents, profits, or cheap T.V.

Defendants filed a Cross/Complaint against the Plaintiffs for intentional fraud; and mis-representation of triable issues of fact; which was dismissed by Defendants timid legal council.

Defendants hired legal counsel had drafted incomplete Oppositions to Plaintiffs Motion, and conducted oral argument; but nevertheless, clearly established that there were triable issues of fact; which absolutely prohibited a Summary Judgment per CCP437(c) and CCP 580 (a); i.e., **a Summary Judgment cannot be had without determining the value of property at auction sale.**

When trial Judge, Joseph was appointed by Presiding Justice HOWATT to hear DO29409, Defendants were unaware at the time that JOSEPH was a State prosecutor under the supervision of KREMER at the Attorney General's office. KREMER was in collusion with HUFFMAN; but at the time Defendants; had no absolute basis for challenge of JOSEPH.

JOSEPH had every reason to believe there were triable issues of fact; that were completely aside from the subject of "fraud"; which he dismissed by virtue of the Parol Evidence Rule (CCP1856(a)).

He also knew for a fact that the $2454 in attorney fees; value of note; and Plaintiffs failure to defend equity were in dispute; but granted Plaintiffs Motion and **attorney fees anyway**.

Appellate Presiding Justice, KREMER intentionally appointed fellow cronies; HUFFMAN; NARES & HALLER to hear DO29409. During the course of Defendants Opposition to Plaintiffs Motion, Opening Brief and Reply to the Appellate Court; Plaintiff had consistently refused to acknowledge or deny obvious allegations of material fact; that included value of property at auction; rents, profits and T.V.; and the disputed attorney fees; which not only made them legally true; but gave Defendants an absolute defense against Summary Judgment per CCP437(c).

HUFFMAN was challenged on grounds of serious bias; he refused, and then personally authorized the Opinion that "fraud" was not an issue in this case; even though he had valid

reasons to believe that theory was false. At the same time, he refused to mention, or acknowledge; that Defendants triable issues of fact were now legally true.

The "clincher" for HUFFMAN's absurd ruling; was his own legal citation in BARBER; which states that, "all doubts must be resolved in favor of the Defendant".

There is no logical reason to believe that the Rulings of DO20483 or DO29409; were not the result of long-standing bias and conflict-of-interest on behalf of the Courts.

No one is above the law, but Justices are excluded from CCP170.6. CCP1856(a) and (g) should be interpreted to incluse all types of fraud, because it is in conflict with other State and Federal Law. Furthermore, Judicial corruption should not be allowed in any State; and the U.S. Supreme Court should refer this case to the U.S. Justice Department for further investigation.

VI. IN PART, THE PURPOSES OF CHALLENGE AND RECUSAL, ARE TO PREVENT INJUSTICE AND JUDICIAL CORRUPTION.

DID THE MIS-APPLICATION OF CALIFORNIA CIVIL CODE OF PROCEDURE 170.6, PREVENT THE DEFENDANTS FROM HAVING A FAIR TRIAL?

1. CCP1856 IS IN CONFLICT WITH STATE AND FEDERAL LAW.

The Plaintiff filed a Complaint for recourse on their note, plus attorney fees; alleging that the deficiency of their note was caused thru no fault of their own. It is a matter of law pursuant to CCP580a; that the Plaintiffs Complaint must allege the date of Foreclosure sale; sale price of property; and the actual value of the property at the time of sale. Plaintiffs Complaint stated none of those facts.

Defendants answered Plaintiffs Complaint in pro se, and denied the amount of the value of the Note and the attorney fees. Defendants also alleged that the Defendants were induced to sign the note by virtue of fraud and misrepresentation of Plaintiffs loan closers; and that Plaintiffs failed to defend their equity at auction.

Plaintiffs filed their motion for Summary Judgment. The body of Plaintiffs Motion claimed that they were entitled to Summary Judgment"as a matter of law", pursuant to CCP437.c.

There is no part of CCP437c that allows a Summary Judgment, if there is fraud, or other triable issues of fact. The Defendants Opposition to Motion re-alleged that there was fraud and triable issues of fact.

The Plaintiffs REPLY did not deny that the value of the Note and attorney fees were in dispute; or that they had failed to defend their equity at auction.

Defendants' counsel established triable issues of fact at oral argument.

By Defendants written pleadings, Judge JOSEPH knew for a fact that the Plaintiffs attorney fees were in dispute; and that CCP1856 could not apply if CC1574 and CC1623 were enforced against the Plaintiffs.

Defendants' Brief to the Appellate Court clearly established triable issues of fact that were undenied by the Plaintiff.

HUFFMAN's Opinion stated that Security Pacific was entitled to Summary Judgment as a matter of law, because, the trial court properly determined the Whites evidence was barred by the Parol Evidence Rule." The Opinion also stated, "the fraud exception to the Parol Evidence Rules, does not apply as the evidence sought to be introduced is of a fraudulent promise, which directly contradicts the express terms of the integrated agreement". And also, "There is a so-called fraud exception to the Parol Evidence Rule. Subdivision (g) of Section 1856 provides in pertinent part, 'this section does not exclude other evidence..... to establish illegality or fraud'. The provision, however, is unavailing to the Whites."

Paragraph 74 of Defendants Petition for Rehearing, stated that, the rental income was about $900 per month, mentioned 6 times; the property value exceeded $300,000; which was mentioned 8 times in Defendants Briefs; CCP 580a, 11 times; CCP 592, 12 times; the disputed $2454 in attorneys fees, 26 times; and the (cheap SONY T.V.) 64 times. Yet, not one of these issues have ever been responded to, or denied by, the Respondent or the Appellate Court.

Paragraph 13 of Defendants Petition states:
"Respondents so-called "undisputed evidence"; proves that TORLONE was not a first-hand witness to anything. At best, TORLONES's "proof" shows that he was in collusion with the

Respondents in an ongoing scheme of fraud and deception. This allegation is also undenied.

In error, Defendants failed to cite the hearsay rule, FRE 804a(4)(5) which prohibits the use of a Declaration, which is not made by a first-hand witness (except death, etc); or because it was procured for reasons of wrongdoing or preventing (the real) witness from testifying.

CCP580(a) is specific. Plaintiff cannot sue for a Summary Judgment unless the date of foreclosure sale; amount of purchase price, and value of property at sale; are set forth in Plaintiffs Complaint. They were not.

CCP437c is specific. Plaintiff cannot obtain a Summary Judgment if fraud or other triable facts in dispute were alleged. The Plaintiff does not deny that those facts were alleged.

CCP592 is specific. All triable facts must be heard by a jury.

CCP1856g is specific. Fraud is excluded from the Parol Evidence Rule.

CC1574 is specific. "Actual fraud is always a question of fact."

CCP170.6 is specific; yet contradictory. Judges must accept the challenge if there is bias or conflict of interest; but Appellate and Supreme Court Justices need not. It is also in conflict with DO20483, (ROSADO refused the challenge); and in DO29409, (HUFFMAN refused the challenge. (NARES & HALLER should have recused themselves on their own motion.)

In DO29409, the opinion of the Appellate and Supreme Courts are in direct conflict with CCP437c, 580a, CCP663, CCP1856g, and CC1574. The U.S. Supreme Court must make an independant judgment of the facts; and that **contraverted allegations of fraud cannot be resolved on a motion for Summary Judgment,** as follows:

"The U.S. Supreme Court has an obligation to test challenged Judgments against the 1st and 14th Amendments; and in doing so, cannot avoid making an independent constitutional judgment on the facts of the case." Bose Corp v. Consumers Union of United States, Inc. **80Led 502.**

"If a United States Court of Appeals consludes that the findings of a United States District Court are clearly erroneous, it may reverse them under Rule 52a of the Federal Rules of Civil

Proceedure." Dayton Board of Education v. Brinkman. **53 LED 2d 851.**

Kelly v. Southern Pacific Company **42LED 2d 498;** (D 47) the U.S. Supreme Court must set aside a lower Court ruling on the facts, as applied to the law; if the finding is "clearly erroneous".

In FREE V. BLAND, 8LED 2d 182 (D 48) "9 controversial allegations of Fraud cannot be resolved upon Motion for SummaryJudgment, but only by a trial on the merits."

The terms of CCP1856(a) are ambiguous; specific, contradictory as follows: " The terms of the writing intended as the final expression of their agreement; may not be contradicted by evidence of any prior agreement, or of a contemporaneous oral agreement." In this case, the Plaintiff primarily hinged its case on CCPPP1856(a); the supposed absence of fraud, and the supposedly non-existent triable issues of fact; which was absolutely false.

2. THE COURTS LEGAL AND FACTUAL ERROR.

The Defendants were induced into the Plaintiffs agreements, on 3 separate occassions, by virtue of fraud on behalf of Plaintiffs loan closers. These allegations were undisputed in all of the Plaintiffs reply papers in the Trial Court and the Appellate Court. Whether or not the 3 agreements were intended to be the final expression of the agreement; is ambiguous, and subject to multiple interpretations. If the 3 agreements cannot be contradicted by prior evidence of fraud; which was a contemporaneous oral agreement; then it is in direct conflict with CCP1856g; which allows evidence of illegality or fraud. CCP1856(a) is also in conflict with Federal Rule 60b; which allows relief from Judgment, where an adversay, engaged in fraud, or misrepresentation. CCP1856(a) is also in conflict with the U.S. Case of FISKE v. BUDER which allows that fraud, whether intrinsic, or extrinsic. Misrepresentation or other misconduct; are express grounds for relief; and "there is no sound reason for their exclusion".

HUFFMANS Opinion states, "While the note does not specifically state that the WHITES were personally liable, notwithstanding the deed of trust; **no other conclusion may be drawn** from the provision Security Pacific could obtain a

judgment against them for the outstanding balance of the note at the time of default."

It is ironic that HUFFMAN claims that there must bave been some sort of inferred "contemporaneous agreement" and concluded that the Plaintiff had some unknown factual reason for full recourse; **when neither the Plaintiff, nor the Defendant have ever made such a claim.** But on the other hand, HUFFMAN claimed that the Defendants **actual "contemporaneous" agreement** was somehow invalid, and unenforceable.

This double-standard application of the law denies equal protection, and due process.

Defendants Opening Brief to the Appellate Court cited COFFELT V. COFFELT, and U.S. V. THROCKMORTON; which states that:**"active concealment of a material fact is having the same effect as a positive misrepresentation:** and **"fraud perpetrated by a party, or his attorney is extrinsic if it prevents the other party from having his day in court."**

Defendants Petition for Re-hearing cited BARBER v MARINA SAILING, INC..

Defendants Appeal to the California Supreme Court cited Schrader Iron Works v. Lee; and Gay v. Torrance; which state:

> **An overt act of the judge which prevents the complaining party from having a fair and impartial trial ; such irregularity must be shown by affidavits presented in conjunction with a new trial motion. Schrader Iron works, Inc. v. Lee (1972) 103 Cal.Rptr. 106, 26 C.A.3d 621.**
>
> **"Personal misconduct of the judge having a case under advisement may be an 'irregularity in the proceedings of the court' for which a new trial may be granted. Gay v. Torrance (1904) 78 P.540, 145 C. 144."**

Each of those Courts knew for a fact that the overt acts of Judges in both DO20483 and DO29409 were deserving of a new trial.

The Presiding Justice of the California Supreme Court has read Defendants Pleadings which proved that there were absolute triable issues of fact ; but summarily denied the

Defendants Petitions on 7/21/99, without comment.

Clearly, the rulings of Federal Courts are in direct conflict with the State Trial Court; Appellate and California Supreme Court rulings.

3. JUDGMENT SHOULD BE REVERSED.

The only logical conclusion that can be reached is; that the bias of the Appellate Court has permeated the Supreme Court to such a degree; that it was not possible for the Defendants to receive a fair hearing in either one of those courts. On these grounds, this case should be remanded back to the trial court, for resolution of all triable issues of fact.

Justice and equity requires a more definitive opinion on the enforceability of CCP1856.

VII OVERT ACTS OF JUDGES ARE GROUNDS FOR A NEW TRIAL. WERE THE DEFENDANTS DENIED A FAIR TRIAL BECAUSE OF IRREGULARITIES ON BEHALF OF JUDGES AND PLAINTIFFS COUNSEL?

1. JUDICIAL MISCONDUCT.

CCP 170.6(1) excludes peremptory challenges of Appellate and State Supreme Court Judges; who may be biased, or corrupt. The terms of CCP 170.6(1) are absolute and specific: No lower Court Judge shall hear an action, <u>if there is prejudice against any party in the action.</u>

Under California Law, the undisputed Declaration of the Defendant, <u>"is a pleading"</u>; and therefore, is legally true. According to the Declaration of WHITE; KREMER, HUFFMAN and NARES had severe bias, motive and intent, to corrupt the Defendants verdict. HUFFMAN, NARES & HALLER had the undeniable power to arrest the Defendant if his allegations were false. The Defendants' undisputed Declaration, easily convinced, HALLER in DO29409; that HUFFMAN & NARES had corrupt motive; and together agreed to deny Defendants Petition. HUFFMAN, NARES & HALLER were all parties to the Defendants denial of a fair trial; clearly there was potential bias; and lack of a quorum of qualified Justices to hear this case.

2. CHALLENGE AND RECUSAL PREVENTS

INJUSTICE.

CCP 170.6(1) is in conflict with itself, Local Federal Rule 83.5f(5), and Business and Professional Code 6068a,b,c,d,g,o; and common law; because their purpose is to weed out potential bias and corruption; however, it exempts Appellate and Supreme Court Justices.

3. OVERT ACTS OF JUDGES AND LEGAL ERROR ARE GROUNDS FOR A NEW TRIAL.

The purposes of Rule 83.5f(5) and BPC6068a,b,c,d,g, and o are specific; they are to support the laws of the State; support actions that are consistent with the truth; and never attempt to obstruct justice by distortion of facts and law.

In COFFELT; U.S.; SCHRADER, & GAY; it is abundantly clear that the Justices in this case knew there was every legal reason to grant the Defendants a new trial; but did not.

4. DEFENDANTS DENIAL OF RE-HEARING WAS AN ABUSE OF DISCRETION.

When the Defendants filed their Petition for re-hearing for the Appellate Court; The Defendants' amended their Petition for Re-Hearing; which set forth the Courts bias and reinerated the numerous triable issues of fact as already set forth here-in above. HUFFMANS's denial of Defendants Evidence which made a clear showing of Courts bias and supplemental facts and legal error constituted an abuse of the courts descretion.

> **"While a motion to permit an amendment to a pleading to be filed is one addressed to the discretion of the court...it is a rare case in which a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case...If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party. It is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error, but an abuse of discretion."[Calif. Cas. Gen. Ins. Co. V. Sup. Ct. (Gorgei) (1985) 173 CA3d 274,218**

On these grounds of error and bias, this case should be

remanded back for trial. (Also see Develop-Amatic Engineering v. Republic Mortgage Co.).

VIII STATE AND FEDERAL LAW DOES NOT ELIMINATE "INTRINSIC" OR "EXTRINSIC" FRAUD, AS A CAUSE TO DENY A MOTION FOR SUMMARY JUDGMENT.
DID THE MISAPPLICATION OF CCP1856(A) DENY THE DEFENDANTS A FAIR TRIAL?

1. NO ONE IS ABOVE THE LAW.

According to the State and Appellate Courts interpretation of CCP1856(a); it is okay for the Plaintiff to commit "extrinsic" fraud; but not "intrinsic" fraud. State and Federal law does not allow the Plaintiff to be above the law.

2. CCP1856(a) SHOULD BE INTERPRETED TO INCLUDE "INTRINSIC" AND "EXTRINSIC " FRAUD.

CCPP1856(a) is discriminatory and prohibited by State and Federal law.

3. CCP1856(g) IS INVALID.

CCP1856(g) allows "fraud" in evidence; but apparently CCP1856(a) does not. However, State and Federal law prohibits the exclusion of "fraud". Therefore, CCP1856(a) is invalid.

IX SHOULD CCP170.6 BE INTERPRETED TO INCLUDE APPELLATE AND SUPREME COURT JUSTICES?

CCP170.6 gives class privilege to Appellate and California Supreme Court Justices; but not to lower California Court Judges. Class privilege is prohibited in all forms of Democratic Common Law. Therefore, CCP170.6 should include all California Judges.

X THE INHERENT POWER OF THE U.S. SUPREME COURT IS TO PREVENT INJUSTICE AND CORRUPTION IN LOWER COURTS. SHOULD THE U.S. SUPREME COURT REFER

THIS CASE TO THE U.S. JUSTICE DEPARTMENT FOR FURTHER INVESTIGATION?

The U.S. Supreme Court is not limited to mere questions of fact and law; but is committed to uphold the law of the U.S. Constitution.

The U.S. Constitution prohibits government oppression and corruption. Therefore, there is no legal reason why the U.S. Supreme Court should not refer this case to the U.S. Justice Department.

XI DAMAGES

Pursuant to California Law, the Defendants are entitled to be granted damages under CCP907 and CCP908; that are "just". The Plaintiff and their counsel knew for a fact; that their contracts did not allow full recourse against the Defendant; and that there were numerous triable issues of fact, which prevented a Summary Judgment. They also knew for a fact that, as a matter of law; CCP580(a) strictly prohibited a Summary Judgment because they had not determined the subject property value at the time of auction sale.

The Defendants have incurred at least $12,000 in costs toward preparing Appellate and U.S. Supreme Court papers in this case.

Whether or not the U.S. Supreme Court considers "costs only", as being "just"; it should also consider what damages might be "just"; it should also consider what damages might be "just", as opposed to being "punitive" and whether "just" damages can be achieved by the Defendants in a California State Court.

XII CONCLUSION

The findings in the U.S. cases of DUKE; GUZMAN; BOSE CORP; & FREE are also specific: erroneous conclusions of fact and law can be set aside for a trial on the merits.

The Plaintiff knew its lawsuit was fraudulent, and

founded upon a false Declaration that was admissable hearsay.

The Trial Court, the Appellate Court and the California Supreme Courts findings of fact and law were clearly erroneous, and the Appellate Court does not deny it had severe bias against the Defendants. Furthermore, the allegations against HUFFMAN, KREMER & NARES are now legally true under California law.

CCP1856a is clearly in conflict with CCP1856g; CCP437c; CCP592; and other citations herein.

CCP170.6 is also in conflict with the purposes of State and Federal law; DO20483 and DO29409; because it exempts potentially biased and corrupt Justices of the Appellate and California Supreme Courts.

XIII REASONS TO GRANT PETITION

Because CCP1856a and CCP170.6 are in direct conflict with the purposes of State and Federal Law, it is of major public importance to resolve these questions in order to preserve the integrity of the Courts.

If "fraud" is allowed to permeate the legal system; or if Judges can refuse challenge with impunity; or issue erroneous decisions against the law; grave injustices can occur. These injustices, could send innocent men to prison; or have them found "insane".

Respectfully submitted,
Dated: December 23, 1999.

Richard White

Janet White